IMT Nuremberg Archives

H – 75

International Court of Justice

H0075 - 0002

OFFICIAL TRANSCRIPT of the International Military Tribunal in the Matter of the United States of America, the French Republic, the United Kingdom of Great Britain and Northern Ireland, and the Union of Soviet Socialist Republics against Hermann Wilhelm Goering, et al, Defendants, sitting at Nurnberg, Germany, on March 4, 1946, 1000-1241, Lord Justice Lawrence, presiding.

COLONEL SMIRNOV: Several days ago the Tribunal directed me to find out with reference to the reading of an official British report, as to the responsibility of the killing of fifty RAF officers who were prisoners. At the time it was suggested that it be read as soon as possible.

May I read into the record several paragraphs of this report? I shall read those parts of the document which, in general, give the characteristics of this criminal act and, on the other hand, it lays down the responsibility for the act.

THE PRESIDENT: Colonel Smirnov, you are offering the document, are you, in evidence? You are seeking to put the document in evidence?

COLONEL SMIRNOV: This document has already been presented in evidence and it has been accepted as such. I would like to read into the record certain parts of it. It has been submitted as USSR Exhibit 413.

THE PRESIDENT: Very well.

COLONEL SMIRNOV: I shall cite paragraph one of the official British report.

"On the night of the 24-25 March 1944, 76 RAFofficers escaped from Stalag Luft III at Sagan in Silesia where they had been confined as prisoners of war. Of these, 15 were recaptured and returned to the camp, 3 escaped altogether, 8 were detained by the Gestapo after recapture. Of the fate of the remaining 50 officers, the following information was given by the German authorities:

"(a) On 6th April 1944, at Sagan the acting Commandant of Stalag Luft III (Oberstleutenant Cordes) read to the Senior British Officer (Group Captain Massey) an official communication of the German High Command that 41 officers (unnamed) had been shot 'some of them having offered resistance on being arrested, others having tried to escape on the transport back to their camp.'

H0075-0003

"(b) On 15 April, 1944, at Sagan a member of the German camp staff (Hauptmann Pieber) produced to the new Senior British Officer (Group Captain Wilson) a list of 47 names of the officers who had been shot.

"(c) On the 18th of May, 1944, at Sagan the Senior British Officer was given three additional names, making a total of 50.

"(d) On or about 12 June, 1944, the Swiss Minister in Berlin received from the German Foreign Office, in reply to his enquiry into the affair, a note to the effect that 37 prisoners of British nationality and 13 prisoners of non-British nationality were shot when offering resistance when found or attempting to re-escape after capture. This note also referred to the return of urns containing the ashes of the dead to Sagan for burial."

The official German version indicated that those officers allegedly were shot while attempting to escape. It was established, however, by the investigating commission of British authorities that the officers were killed and they were killed by members of the Gestapo on direct orders from Keitel and Goering.

I shall, with your permission, read into the record in confirmation of these two points, the official British report, that is point seven and eight.

"General Major Westhoff at the time of the escapes was in charge of the General Department relating to Prisoners of War and on 15 June 1945, he made astatement in the course of which he said that he and General von Graevenitz, the Inspector of the German POW organization, were summoned to Berlin a few days after the escapes and there interviewed by Keitel. The latter told them that he had been blamed by Goering in the presence of Himmler for having let the prisoners of war escape.

"Keitel said, 'Gentlemen, these escapes must stop. We must set an example. We shall take very severe measures. I can only tell you that the men who have escaped will be shot; probably the majority of them are dead already.' When von Graevenitz objected, Keitel said, 'I don't care a damn; we discussed it in the Fuehrer's presence and it cannot be altered.'"

I now quote paragraph 8 of the official British report.

H0075-0004

"Max Ernst Gustav Friedrich Wielen was then the officer in charge of the Criminal Police at Breslau, and he also made a statement dated 26 August, 1945, in the course of which he said that as soon as practically all the escaped R.A.F. officers had been recaptured he was summoned to Berlin where he saw Arthur Nebe, the Chief of the Criminal Police Head Office who showed him a teleprint order signed by Kaltenbrunner which was to the effect that on the express order of the Fuehrer over half of the officers who had escaped from Sagan were to be shot after their recapture. It was stated that Mueller had received corresponding orders and would give instructions to the Gestapo. According to Wielen the Criminal Police, who were responsible for collecting and holding all the recaptured prisoners, handed over to the Gestapo the prisoners who were to be shot, having previously provided the Gestapo with a list of the prisoners regarded by the Camp authorities as troublesome."

I quote from page 3, paragraph 5.

"Flight Lieutenants Wernham, Kiewnarski, Pawluk and Skanziklas ----"

THE PRESIDENT: Colonel Smirnov, are you going to read now some of the evidence upon which the report is based?

COLONEL SMIRNOV: Now I would like to read into the record the text of the report and other parts of the report which deal with the methods of investigation in regard to individual officers.

I would like to read three paragraphs dealing with three groups of officers.

THE PRESIDENT: Paragraph 4?

H0075-0005

COLONEL SMIRNOV: Yes.

THE PRESIDENT: Very well.

COLONEL SMIRNOV: I quote.

"On orabout the 26th of March, 1944, these officers were interrogated at the police station in Hirschberg and were then moved to the civil gaol in that town. On the morning of the 29 March Pawluk and Kiewnarski were taken away and later in the day Skanizklas and Wernham left. Both parties were escorted but their destination was unknown. They have not beem seen since and the urns later received at the Stalag showing their names bear the date 30 March, 1944.

And now the next group of British officers.

"Squadron Leader Cross, Flight Leiutenants Casey, Wiley and Leigh and Flight Officers Pohe and Hake.

"Between 26 and 30 March, 1944, these officers were interrogated at the Kripo Headquarters in Goerlitz and then returned to the gaol there. During the interrogation Casey was told that he would lose his head; Wiley that he would be shot and Leigh that he would be shot. Hake was suffering from badly frost bitten feet and was incapable of travelling for any distance on foot. On 30 March the officers left Goerlitz in three motor cars accompanied by ten German civilians of the Gestapo type. The urns later received at the Stalag bear their names and show them to have been cremated at Goerlitz on 31 March 1944.

"Flight Lieutenants Humphreys, McGill, Swain, Hall, Langford and Evans, Flight Officers Valenta, Kolanowski, Stewart and Birkland.

"These officers were interrogated at the Kripo Headquarters in Goerlitz between 26 and 30 March. Swain was told that he would be shot, Valenta was threatened and told that he would never escape again. Kolanowski was very depressed after his interview. On 31 March these officers were collected by a party of German civilians, at least one of whom was in the party which had come on the previous day. The urns later received at the Stalag bore their names and show them to have been cremated at Liegnitz on a date unspecified."

I wish to draw the attention of the Tribunal to the fact that similar

H0075-0006

data also relates to different groups of British officers who were killed by the Germans in Stalag Luft III.

On the next page of the text there is the same information relating to Flight Lieutenants Grisman, Gunn, Williams and Milford and Flight Officer Street and Lieutenant McGarr. The same information is given in regard to Flight Lieutenart Long, Squadron Leader Williams, Flight Lieutenants Bull and Mondschein, Flight Officer Kieráth. The same kind of information is given with reference to Flight Officer Stower, Flight Lieutenant Tobolski, Flight Officer Krol, Flight Lieutenants Wallen, Marcinkus and Brettell, Flight Officer Picard, and Lieutenants Gouws and Stevens, Squadron Leader Bushell and Lieutenant Scheidhauer, Flight Officer Cochran, Lieutenants Espelid and Fugelsang, Squadron Leader Kirby-Green and Flight Officer Kidder, Squadron Leader Catanach and Flight Officer Christensen and Flight Lieutenant Hayter.

I shall, with your permission, read into the record one more paragraph from this official report. I refer to paragraph 6 of the official British report and also to paragraph 5.

THE PRESIDENT: I was going to suggest you should read paragraph 5,

COLONEL SMIRNOV: I was going to read paragraph 5 of the British text.

"According to the evidence of the survivors there was no question of any officers having resisted arrest or of the recaptured officers having attempted a second escape. All were agreed that the weather conditions were against them and that such an attempt would be madness. They were anxious to be returned to the Stalag, take their punishment and try their luck at escaping another time.

"6. The Swiss representative, M. Gabriel Naville, pointed out on 9 June, 1944, in his report on his visit to Sagan, that the cremation of deceased prisoners of war was most unusual (the normal custom being to bury them in a coffin with military honours) and that was the first case known to him where the bodies of deceased prisoners had been cremated. Further, it may be noted that if, as the Germans alleged, these 50 officers who were recaptured in widely scattered parts of Germany had resisted arrest or attempted a second escape, it is probable that some would have been wounded and most improbable that all would have been killed. In this connection it is significant that

H0075 - 0007

the German Foreign Office refused to give to the Protecting Power the customary details of the circumstances in which each officer lost his life."

Those are the parts of the official report of the British Government which I had the honor to relate to the Court.

H0075-0008

THE PRESIDENT: I think it would perhaps be better if you also read the appendix so as to show the summary of the evidence upon which the report proceeded, Paragraph 9.

COLONEL SMIRNOV: I did not read the appendix because it was read. I shall read it once again.

"9. The Appendix attached hereto gives a list of the material upon which this report is based. The documents referred to are annexed to this report.

"APPENDIX

"Material upon which the foregoing report is based;

"1. Proceedings of Court of Inquiry held at Sagan by order of the Senior British Officer in Stalag Luft III and forwarded by the Protecting Power.

"2. Atatements of the following Allied witnesses:

"a. Wing Commander Day.

"b. Flight Lieutenant Tonder

"c. Flight Lieutenant Dowse

"d. Flight Lieutenant van Wyneersch

"e. Flight Lieutenant Green

"f. Flight Lieutenant Marshall

"g. Flight Lieutenant Nelson

"h. Flight Lieutenant Churchill

"i. Lieutenant Neely

"j. P. S. M. Hicks

"3. Statements taken from the following Germans:

"a. General Major Westhoff

"b. Oberregierungs und Kriminalrat Wielen (two statements)

"c. Oberst von Lindeiner.

"4. Photostat copy of the official list of dead transmitted by the German Foreign Office to the Swiss Legation in Berlin on or about 15th June 1944.

"5. Report of the Representative of the Protecting Power on his visit to Stalag Luft III on 5th June 1944."

H0075-0009

THE PRESIDENT: Then, for the purposes of the record, you had better read in the signature and the department at the bottom.

COLONEL SMIRNOV: The document is signed by H. Chapcott, Brigadier, Military Deputy, and is certified by Military Department, Judge Advocate General's Office, London, 25 September 1945.

THE PRESIDENT: Colonel Smirnov, so far as the Russian Chief Prosecutor is concerned, does that conclude the case for the Prosecution?

COLONEL SMIRNOV: Yes.

DR. NELTE (Counsel for the defendant Keitel): Mr. President, the report which the Prosecution has just read refers again to the documents which it has been said are attached to the report. In the appendix there are several documents listed upon which the report is based. I ask the Tribunal to decide whether the document USSR-430 would be acceptable without attaching the additional material which is definitely mentioned in the report, whether that document is relevant according to Article 21 of the Charter, and if it is not, I request that the Prosecution be asked to also give the appendix to the text.

THE PRESIDENT: Dr. Nelte, do you mean that you have only had the report made by the Brigadier and you haven't seen any part of the other evidence upon which the report proceeds?

DR. NELTE: Mr. President, the Tribunal, in a former case in this trial, once decided --

THE PRESIDENT: (interposing): Yes, but I didn't ask you what we had decided. I asked what you had received. Have you received from the Prosecution the whole of this document or only the report made by the Brigadier?

DR. NELTE: Only the report, without the appendix.

THE PRESIDENT: Well, the Tribunal certainly intended thatthe whole of the document should be furnished to defendant's

H0075-0010

counsel, and that must be done so that you may have all the documents before you.

DR. NELTE: Evidently that has not been done. In the appendix there was reference made to statements by Major General Westhoff and by Oberregierungs un Kriminalrat Wielen. I have not read either statement. They were not included in the report.

THE PRESIDENT: The Prosecution must see that the whole of this documer is furnished to the defense counsel.

SIR DAVID MAXWELL-FYFE: Certainly, My Lord. I don't think the whole of it has been published, but if Dr. Nelte will let us know if he wants the whole of it, or a part, we will cooperate the best way we can. The last thing we desire is that he shouldn't have it. We want him to have everything he wants.

THE PRESIDENT: Well, Sir David, will you inform the Tribunal whether the Prosecution has now concluded their case.

SIR DAVID MAXWELL-FYFE: Yes, My Lord. That is the conclusion of the case for the Prosecution.

THE PRESIDENT: Very well. Then we will now proceed with the applications for witnesses and documents by the second four of the defendants, Kaltenbrunner, Rosenberg, Frank and Frick.

DR. KAUFFMANN (Counsel for the defendant Kaltenbrunner): The defendant Kaltenbrunner asks to call a number of witnesses which I will name now. First, Professor Dr. Burckhardt.

SIR DAVID MAXWELL-FYFE: My Lord, if the Tribunal approves, we will adopt the same procedure as was done on the first four defendants.

With regard to the three Swiss witnesses, Burckhardt, Brachmann and Meyer, the interrogatories were granted on the 15th of December and submitted on the 28th of January. The Prosecution suggested that they might be made more precise. The Prosecution has no objection to interrogatories in principle, and I am sure that there wouldn't be much difference between Dr. Kauffmann and the Prosecution as to the form. That applies to the first three witnesses.

THE PRESIDENT: We are informed that none of these three witnesses

H0075-0011

have been located yet.

SIR DAVID MAXWELL-FYFE: Well, I respectfully agree, My Lord. That is the position of the Prosecution, that we have no objection in principle to these interrogatories, and if we can help the Court in any way to locate the witnesses, we should be glad to do so.

THE PRESIDENT: When were the interrogatories furnished to the Prosecution?

SIR DAVID MAXWELL-FYFE: The 28th of January, My Lord.

THE PRESIDENT: And were the Prosecution's objections communicated to the defense counsel shortly afterwards, or when?

SIR DAVID MAXWELL-FYFE: I'm sorry: I am afraid I haven't got that date, My Lord.

THE PRESIDENT: Wouldn't the most sensible course be for the Prosecutio to try to agree upon a suitable form of interrogatory whilst the General Secretary is prosecuting further inquiries to find the witnesses?

SIR DAVID MAXWELL-FYFE: Yes. Well, if Dr. Kauffmann will communicate with me, I have no doubt that we could agree on a form that would be mutually acceptable.

THE PRESIDENT: Very well.

DR. KAUFFMANN: Therefore, I need not repeat the individual questions which I have mentioned in the interrogatory. I don't think that I have to repeat them now, do I?

THE PRESIDENT: No, certainly not.

DR. KAUFFMANN: The fourth witness is the former German Minister in Belgrade, Neubacher. At present he is in an internment camp, Oberursel, near Frankfurt, in American custody.

SIR DAVID MAXWELL-FYFE: No objection to this witness.

H0075 - 0012

DR. KAUFFMANN: Does the Tribunal want me to specify the evidence?

THE PRESIDENT: Yes, if you would.

DR. KAUFFMANN: Neubacher will, in the opinion of the defendant Kaltenbrunner, be able to testify that the stopping of the persecution of Jews in October 1944, which was ordered by Hitler, really was done at the order of Kaltenbrunner or on the initiative of Kaltenbrunner.

Furthermore, in theopinion of the defendant, he will be able to testify that Himmler had made the defendant the Chief of the Reichssicherbeitshauptamt and put him in charge of Officers 3 and 6. This seems to be an important point because so far the prosecution has always maintained -- and there is certain evidence for that- that the defendant was also in a definite connection with Office No. 4, and this Neubacher is expected to clarify.

THE PRESIDENT: Dr. Kauffmann, if those are the questions which it is desired to interrogate Neubacher on, couldn't they be dealt with by interrogatories?

DR. KAUFFMANN: According to the information which I received from Kaltenbrunner, Kaltenbrunner stresses the personal presence of this witness for personal reasons. I believe that Kaltenbrunner considers this witness as one of his most important witnesses, and he would like to see that this witness be called.

THE PRESIDENT: Well, the Tribunal will consider that.

DR. KAUFFMANN: The next witness is number 5, Wanneck, at present in American custody.

SIR DAVID MAXWELL-FYFE: The prosecution suggests that the witness Wanneck is cumulative. According to Dr. Kauffmann's application, he is going to deal with the point that the defendant Kaltenbrunner was actually occupied mainly with the task of the intelligence service, and that he objected to persecution of the Jews. That is already covered by Neubacher, and it is also covered by the cross examination of the prosecutions's witness Schellenberg, who was the Chief of Amt 6, which Dr. Kauffmann has set out in his note on the witness Neubacher, number 4, as being one of the Intelligence Amts.

DR. KAUFFMANN: I leave it to the Tribunal whether this witness could be dealt with by an interrogatory, but I think the matter is essential. In a

H0075 - 0013

certain sense it is cumulative, but in some points it will go beyond that. I agree with an interrogatory.

The sixth witness is Scheidler.

THE PRESIDENT: Sir David, do you think it would be unreasonable to administer an interrogatory?

SIR DAVID MAXWELL-FYFE: No, My Lord. Generally I make no objection to interrogatories at all.

With regard to Scheidler, he was, as I understand the application, the defendant Kaltenbrunner's adjutant, and as such the prosecution would not make any objection. But I think it would be convenient if I were to draw the attention of the Tribunal to the fact that the next six witnesses, number 6 to 11 inclusive, all deal with concentration camps, and numbers 6, 8, 9, and 11 deal with Mauthausen. I want to give Dr. Kauffmann warning that I shall ask for some selectivity amongst these six witnesses.

The prosecution feel that the application for an adjutant is a reasonable one, but it will be reflected in objections to later witnesses.

DR. KAUFFMANN: The defendant, of course, considers it very important that the adjutant, who has served him for many years, who was present at every individual thing, be called. He knows also, for instance, that the broadcast to Fegelein, which is a matter of evidence for the prosecution, was not issued by Kaltenbrunner. He also knows that Kaltenbrunner, particularly in Theresienstadt, had made all preparations to see that this camp should be made accessible to the Red Cross.

These are the details which have not been brought out by witnesses so far, but they do shed some light --

THE PRESIDENT: You are speaking now of Scheidler?

DR. KAUFFMANN: Yes

H0075 - 0014

THE PRESIDENT: Sir David, the Tribunal would like you to deal with the whole of that group together, and then Dr. Kauffmann can answer what you say.

SIR DAVID MAXWELL-FYFE: With pleasure, My Lord.

The next witness is Ohlendorf, who was called as a witness for the prosecution. The situation as I have found it is that Dr. Kauffmann did cross examine the witness Ohlendorf on the defendant Kaltenbrunner's responsibility over concentration camps on the 3rd of January of this year, at page 2034 of the transcript.

The witness Wisleceny, number 12, who hasnot been cross examined on behalf of Kaltenbrunner by Dr. Kauffmann, would be the natural person to deal with that point. But, of course, if Dr. Kauffmann has any special point for the recalling of Ohlendorf, he will tell the Tribunal.

That is the position.

THE PRESIDENT: Dr. Kauffmann, if you had the opportunity of cross examining General Ohlendorf and actually availed yourself of the opportunity wasn't that the appropriate time for you to put any questions which you had on behalf of the defendant Kaltenbrunner?

DR. KAUFFMANN: Mr. President, may I remind you that Kaltenbrunner was sick for over 12 weeks and that I had almost no information fromhim? At that time, in the session of the 2nd of January, it was told to me, by the Court, that I could confer with the witnesses at a later date -- because, as the Court will remember, I had made a motion to call them later -- and then I was permitted to cross examine the witnesses later, at a date which I could name.

That is included in the transcript of the 2nd of January.

Therefore, now that Kaltenbrunner is here and they have been called in theabsence of Kaltenbrunner, I would like to be able to cross examine them at this time. I am prepared to forego the cross examination if I could talk to the witnesses before. Perhaps it will be unnecessary to call one or the other witness.

THE PRESIDENT: What do you mean by one or the other witness? Which is the other? Wisliceny?

H0075 - 0015

DR. KAUFFMANN: Number 7, Ohlendorf; then number 11; Hoellriegel; number 12, Wisliceny; number 14, Schellenberg. All these witnesses have been called here and have been examined here, and Kaltenbrunner was sick at that time.

THE PRESIDENT: What do you say about it, Sir David?

SIR DAVID MAXWELL-FYFE: I should suggest that Dr. Kauffmann cross examine number 11, Hoellriegel, and number 12, Wisliceny, whom he has not cross examined so far. And then, if there is any special point which remains to be dealt with by the witness Ohlendorf, Dr. Kauffmann can make a special application to the Court.

H0075 - 0016

THE PRESIDENT: Yes. Well, the Tribunal would like to know what position you take about the Defendants' Counsel seeing these witnesses and discussing with them before they call them. I mean, there is a distinction between cross-examination when Defendants' Counsel cannot see them and calling them as their own witnesses when they can see them.

SIR DAVID MAXWELL-FYFE: Well, the Prosecution feel that they ought simply to cross-examine witnesses that have been called by the Prosecution, unless there is very special circumstances. I think that Dr. Seidl showed special circumstances with regard to the case that he mentioned, of one witness in relation to the Defendant Hess. But as a general rule, the Prosecution submit that witnesses that they have called should be cross-examined without prior consultation.

THE PRESIDENT: Well, Sir David, the Tribunal would like to know your view. Of course, we are not deciding the point now, but we should like to know your view as to whether it would be a proper course to allow the Defendants' Counsel to see the particular witness in the presence of a representative of the Prosecution, because it may be that that would lead to a shortening of the proceeding, because the Defendants' Counsel might after that not wish to cross-examine the witness any further.

SIR DAVID MAXWELL-FYFE: Well, I am afraid that would require discussions with my colleagues on each particular witness. I am afraid I haven't covered that point. Witness 11 and 12 were called by my American colleagues and although I have the general position which I put before the Tribunal, I haven't discussed that point, but I shall be pleased to discuss it with them and perhaps to inform the Tribunal later on in the day.

Of course, you will appreciate there may be a special point relating to a special witness that may come up.

DR. KAUFFMANN: Perhaps I may give a clarification. As to the witness Ohlendorf, I was told I could cross-examine him later and an agreement with the Prosecutor of the United States has already been made that I forego the cross-examination of Ohlendorf and under that condition I could agree to Ohlendorf already. I think it would be quite fair if I could do that with regard to other witnesses. That would mean that I forego the cross-examinati

H0075 - 0017

and be able to speak to them. Maybe in one of the other cases this could be done.

THE PRESIDENT: I am not quite sure that I understand the view being put to you Dr. Kauffmann. The view is that when a witness is called on behalf of the Prosecution the Defendants' Counsel certainly have the righ to cross-examine the qitness, not to see the witness beforehand, but only to cross-examine him. If on the other hand they are entitled to call that witness as their own, then they are entitled to see him beforehand, which is --

DR. KAUFFMANN: Yes, sir, that is exactly what I mean. But if I can speak to the witness beforehand, then the Court will understand, in the presence of a representative of the Prosecution, that I would like to avoid that, if if is possible, because the reasons which may be reasons for me to forego the calling of the witnesses would then be known to the Prosecution. I believe that everybody will understand that, and if seems to be fair.

THE PRESIDENT: The Prosecution said that when the witness was called for the Prosecution the right of the Defendants is only to cross-examine. Can you help us further with respect to this group, Sir David.

SIR DAVID MAXWELL-FYFE: Certainly with regard to Eigruber, No. 8, he is no longer in Nurnberg, and he is being held as a probable Defendant in the case concerning Mauthausen Camp, which will be dealt with by a military court, and therefore the Prosecution suggests that in the circumstances, as he is one of this group dealing with concentration camps in general and Mauthausen in particular, he ought to be dealt with by interrogatories.

Then with regard to Hoettl, No. 9, he deals with two aspects of one point, that is, that Kaltenbrunner on his own initiative ordered the surrender of the concentration camp of Mauthausen and that he took steps to induce Himmler to release people from concentration camps. These seem to be general points that again might be conveniently dealt with by interrogatories.

And the same applies to the witness von Eberstein, who deals with the point that Kaltenbrunner is alleged not to have given an order to destroy the concentration camp at Dachau and that he did not give an order to evacuate Dauchau. The Prosecution suggest that there ought also to be interrogatories.

With regard to the next witness, Hoellriegel, the Prosecution make no

H0075-0018

objection to further cross-examination, and respectfully suggest to the Tribunal that he will be able to deal with the question of Mauthausen which is one of the main questions that this whole group of witnesses are called to deal with.

DR. KAUFFMANN: Maybe I can say something to that --

THE PRESIDENT: Are you in agreement with No. 12, in the same group?

SIR DAVID MAXWELL-FYFE: No. 12 is not in the same group, because he deals with the question of Kaltenbrunner's relations with Eichmann and with reports he received regarding the action against the Jews. We have no objection to this witness being called for cross-examination, as Dr. Kauffmann did not cross-examine him.

THE PRESIDENT: Yes, sir. Dr. Kauffmann?

DR. KAUFFMANN: Concerning the witness Eigruber, No. 8, may I point out that this witness is here in Nurnberg. However, I agree that interrogatories should be sent. The subjects, it seems to me, are relevant. For what Eigruber is supposed to say is not more or less than the fact that the concentration camp, Mauthausen, was immediately supervised by Himmler through Pohl and the commander of the camp, and Kaltenbrunner denies that he was informed about any more deals concerning the camp of Mauthausen. Two witnesses--

THE PRESIDENT: You were in error in saying he was here in town. Sir David said he has been removed from Nurnberg for the purpose of trial by a military court. So perhaps you won't object to interrogatories in that case.

DR. KAUFFMANN: That's right.

The witness Hoettl is, in my opinion, an important witness, as it is known that Kaltenbrunner is also accused of having participated in the conspiracy against the peace, and here I intend to prove that Kaltenbrunner since 1943 has conducted an active peace policy. An important name in this connection is Mr. Dulles. That is according to information received from Kaltenbrunner, they were confident that he was a friend of the late President Roosevelt. Mr. Dulles was in Switzerland and continuously, according to the information received from Kaltenbrunner, there were conversations in that direction. I believe that this subject is relevant.

H0075 - 0019

THE PRESIDENT: You mean that you want Dr. Hoettl in person, not by way of interrogatories?

DR. KAUFFMANN: Yes, if I may ask for that.

THE PRESIDENT: The Tribunal will consider that.

DR. KAUFFMANN: Witness No. 10, Police General von Eberstein, is named to prove that the statement of another witness of the name of Gerdes is untrue. The Tribunal will probably remember that the Prosecution submitted an affidavit by a man named Gerdes who played an important role in Munich. He was a confidential friend of the former Gauleiter of Munich, and Gerdes says in that affidavit that Kaltenbrunner had given the order to bomb Dachau by airplanes and destroy it. Kaltenbrunner definitely denies that.

THE PRESIDENT: That is a matter which could be clearly dealt with by interrogatories, whether or not Kaltenbrunner did give an order to destroy a concentration camp, or an order to evacuate Dachau. Surely those are matters which admit of proof.

H0075-0020

by interrogatories.

DR. KAUFFMANN: I agree, your Honor.

Concerning the next witness, No. 11, the witness who has already been heard, Hoellriegel, there is the same problem, that is, whether I will be given the opportunity to speak to this witness before examining him. Kaltenbrunner denies that he has ever seen gas chambers.

THE PRESIDENT: Dr. Kauffmann, isn't No.11 really cumulative to No. 6, whom you particularly wanted to call?

DR. KAUFFMANN: Yes, Mr. President, certainly.

THE PRESIDENT: Anyhow, the Tribunal will consider the question whether you ought to be given the right merely to cross-examine or to recall as your own witness, with reference to 11 and 12.

DR. KAUFFMANN: Yes, sir.

May I say one more thing concerning the witness; No. 12? Eichmann, as is well know, is the man who directed the acts of extermination against the Jews and this action has been brought in connection with the Defendant Kaltenbrunner. Kaltenbrunner denies that. Therefore I consider Wisliceny a very relevant witness.

THE PRESIDENT: That concludes that group. What about the latter ones, Sir David? Are they in the same category?

SIR DAVID MAXWELL-FYFE: Not quite, but I think it might be convenient if I deal with them.

Dr. Mildner, No. 13, is sought to testify that Kaltenbrunner did not authorize the chief of the Gestapo to sign orders for protective custody of internment, and I should reply that in view of the previous evidence, of Scheidler and No. 4, Neubacher, Dr. Meldner's evidence was cumulative and that interrogatories would suffice.

As to Schellenberg, No. 14, I have already said that the Prosecution make no objection to his recall for cross-examination.

Finally, Dr. Rainer. We do object to that request, because the object of his testimony, that Kaltenbrunner recommended to the Gauleiters of Austria not to oppose the advancing troops of the Western Powers and not to organize "werewolf" movements, is in our submission, irrelevant to the issues before this Tribunal.

H0075-0021

THE COURT: Yes. Dr. Kauffmann?

DR. KAUFFMANN: The witness, Dr. Mildner, No. 13, is here in Nurnberg, in custody. For that reason I have asked to call this witness, because the witness has submitted an affidavit in which he charged Kaltenbrunner with certain things, and Kaltenbrunner denies them. And I do not believe that within these difficulties can be overcome within an interrogatory.

Now, I come to No. 14 --

THE PRESIDENT: Dr. Mildner had submitted an affidavit?

DR. KAUFFMANN: Yes, sir.

THE PRESIDENT: Do you mean --

DR. KAUFFMANN: In the Prosecution there is reference made to an affidavit by Dr. Mildner. I believe it was on the 3rd of January. The name of this witness was mentioned in connection with the accusations against Kaltenbrunner. That name is mentioned as one or the other of two affidavits --

THE PRESIDENT: But if the affidavit hasn't been produced to the Court, what have we got to do with it? We haven't seen it, at least in my recollection.

DR. KAUFFMANN: Yes, sir.

SIR DAVID MAXWELL-FYFE: I haven't been able to trace this affidavit of Dr. Mildner's. I don't remember it, but I will willingly check the reference that Dr. Kauffmann has given.

THE PRESIDENT: Of course, if the Prosecution can use the affidavit, then you would have no objection to the witness being called for cross-examination?

SIR DAVID MAXWELL FYFE: Well, in general, no. The reason why I am rather surprised is that usually that point has been taken when it is sought to use the affidavit. The Defense Counsel involved has asked for the production of the witness, but I will have it looked into, this particular point; but ingeneral the Tribunal may take it that unless we put forward a special point, where an affidavit has been given and where we have not argued to the Court previously, it is a very good case for the

H0075-0022

witness being brought here, if it is convenient.

THE PRESIDENT: I didn't understand that Dr. Kauffmann was saying that the affidavit had actually been put in by the Prosecution but there was some reference made to it. Is that right, Dr. Kauffmann?

DR. KAUFFMANN: Mr. President, in about ten seconds I can find out about it. I have the file here.

(here Dr. Kauffmann went through a file of papers.)

THE PRESIDENT: Dr. Kauffmann, perhaps we will give you an opportunity of looking that up. We will adjourn now for ten minutes.

(A recess was taken.)

H0075 – 0023

Page 5337

Not used

H0075-0024

DR. KAUFFMANN: In the record of 2 January, the name of Mildner appeared, but not in the form of an affidavit; in the form of a letter which a third person had written, and this letter is named and the name of Mildner appears in this letter, not in an affidavit. I would, therefore, request that Mildner be interrogated in writing.

Now we are turning to witness Number 15.

THE PRESIDENT: Fourteen.

DR. KAUFFMANN: We have already dealt with Number 14.

THE PRESIDENT: Oh, you have already dealt with that? Very well, then, Fifteen.

DR. KAUFFMANN: That is the witness Rainer, who was a former gauleiter. In this case, I should request to hear this witness, who is in Nurnberg. The contents of this testimony seems important to me. In the Indictment there was nothing contrariwise mentioned toward Kaltenbrunner, but when we mention breaches of the peace, it seems important and relevant to me if a defendant tries to clear himself, and we should hear his witness.

THE PRESIDENT: Would an interrogatory satisfy you for that witness?

DR. KAUFFMANN: Yes, My Lord.

THE PRESIDENT: Yes.

DR. KAUFFMANN: I have not submitted any documents, Mr. President. It is possible that in the course of time I will present affidavits which have not been presented by me because I have not been able to present them up to this time.

THE PRESIDENT: The Tribunal understands, Dr. Kauffmann, that you wish to reserve to yourself the right to apply to put in documents at a later stage.

DR. KAUFFMANN: Yes, I request that permission.

THE PRESIDENT: The Tribunal will consider that and let you know when they make the order.

Yes, Dr. Thoma?

SIR DAVID MAXWELL-FYFE: Dr. Thoma suggests that we deal with the document list.

THE PRESIDENT: Very well.

H0075 - 0025

SIR DAVID MAXWELL-FYFE: On the first six documents, which are quotations from various books on philosophy the Prosecution submit that they are irrelevant to the question of the ideology propounded by the defendant Rosenberg, which the Prosecution make part of the case against him.

Of course, if the purpose is merely that Dr. Thoma would quote from such books in making his speech and if he would let us know the passages he wants to quote so they can be dealt with mechanically, we don't make any anticipatory objection.

I think that teks us up to Number 6, which are purely general books on philosophy. The Prosecution view with some dismay all these books being put in evidence and the Prosecutors having to read them.

I think I have made the position quite clear that if Dr. Thoma wishes to use them to illustrate the argument, and if he lets us know the passage, we make no general objection, but we object to them being put in as evidence, as not being relevant to the matters before the Court.

DR. THOMA (Counsel for the Defendant Rosenberg): I believe that only in an exhibition of the ideology before Rosenberg is brought in an impression of the spiritual need of the German people after the first world war, which had been lost, can be gained, and that only through the spiritual need of the people can we see how and why Rosenberg was of the opinion that his ideas would be or might be of help.

I am especially concerned and interested in the fact of proving that Rosenberg's opinions and ideas are a phase of the ideological conceptions of the then current times; that is, that a number of philosophers of Germany and of the foreign countries preceded him, and I am especially concerned that I anticipate the objection that the ideology of Rosenberg was a degenerate and -- I must use the word -- dirty ideology, and I must refer to the gentlemen of the Prosecution, especially Mr. de Menthon, who was especially concerned with the ideology of National Socialism and dealt with the many ramifications of this ideology. I believe in such a way the

H0075-0026

French Revolution of 1789 is considered in the same light as something unpardonable. It is considered as such by the neighboring countries and neighboring peoples.

The statements of this gentleman have a special importance, and I believe that Nazi ideology was by him mentioned as a special phase, and I believe that we should have the opportunity that his ideology was presented to the other countries at that time, and I would request that contemporary philosophers of that time should be heard, and I am especially interested in showing what other philosophers have said about Rosenberg, what they had to say about Living Space, and how these other philosophers felt on the same subject. These ideas are based on rational facts, and they should not be considered as anti-scientific, even though they are considered as anti-humanistic and disturbing to humanism.

I would like to show that these ideas, because of their significance, were treated by rational and empirical science, and it seems important to me that, in fact, in the political sphere of other countries, they were put into practice and used, and I would like to point to the United States and their immigration laws, which also discriminate against certain races and favor others.

SIR DAVID MAXWELL-FYFE: As I understand Dr. Thoma, he wants to use the teachings of other philosophers as illustrations and argument. If he is going to quote from them, then all that the Prosecution asks is that he tell us which passages he is going to quote, but we suggest that it is not relevant for us to go into an examination of, say, M. Bergson's book as a matter of evidence.

It is a perfectly clear distinction, and I suggest that Dr. Thoma will be well able to develop the point which he has just put with the limitation which I have just suggested.

THE PRESIDENT: Dr. Thoma, the Tribunal would like to know what it is that you actually propose. Are you proposing to put

H0075 - 0027

in evidence certain passages from certain books and that the Tribunal should read them or are you simply asking for the production of books so that you may consult them, read them and then incorporate in your argument certain ideas which you may gather from the books?

DR. THOMA: I would request that the Tribunal take official notice of the contents of the books which I will cite. I will not read all these quotations, but I would ask the Tribunal to take official notice in a large scope and I would beg that the Tribunal would receive the quotations so that they would be able to get a clear idea of the ideological ideas especially the spiritual situation of the German people, as shown in these quotations.

THE PRESIDENT: But the books are not books of any legal authority. You can only cite, surely, to a court of international law books that are authorities on international law. You can, of course, collect ideas from other books which you can incorporate in your argument. You cannot cite them as authorities.

DR. THOMA: Through the fact that I submit the quotations by known philosophers who had similar ideas to Rosenberg's, I would like to prove that this ideology is to be considered in a serious vein, and I would also like to prove that those things which are considered detrimental in the ideology of Rosenberg, which are considered degenerate, are ramifications of this ideology, and in my opinion, it seems very important for the Tribunal to know the history of the philosophy, and that even in the best ideas -- and I point to the ideas of the French Revolution -- that a certain degeneracy, so to speak, may creep in, and this historical parallel I would like to co-relate with National Socialism and with the ideology of Rosenberg.

I also need these books to bring the following proof: That Rosenberg was only concerned with the spiritual combat of ideology and religion, and that he was not in a position to prevent the brutal application in National Socialism of his ideology but his scientific basis was given a free rein and his theological opponents the Gestapo, was never called in his aid. He assumed that his popular ideas were not to be carried through or applied by force, but that every people should keep its own national character and identity and that only a mixture with allied races was permissible. He believed that this ideology was in the interest of the German people and of

H0075 - 0028

humanity and was to be considered as such, and I believe that the Tribunal should have the plastic background of the rise of National Socialism, and should take into consideration the spiritual condition of the time.

THE PRESIDENT: The Tribunal will consider the argument you have addressed to it.

SIR DAVID MAXWELL-FYFE: With regard to the document number 7, that is excerpts from certain books, the first five are from Rosenberg's own works, and the last is a book by another author on Hitler.

Again I submit that if Dr. Thoma wants to support the theses contained in the first half of his note -- that "the defendant Rosenberg does not see individual and race, individual and community in contrast but represent the new romantical conception that the personality finds its perfection and its inner freedom by having the community or the racial spirit developed and represented within itself."

If Dr. Thoma will give any of the extracts from Rosenberg's works on which he bases that argument, then he can present them at whatever part of his case is convenient, and similarly, with regard to the specific points set out in the second part of his note, there again, if he will give the relevant extracts, they can be considered and their relevancy for the purpose of this Court dealt with when he introduces them in his presentation.

H0075 - 0029

But again I take general objection to the fact that either the Court or the Prosecution should read all these works and treat them as evidence. I developed that in the previous document.

DR. THOMA: My Lord, when I quote Rosenberg's works and ask the Tribunal take official notice, I am in the fortunate position to prove just how the philosophy and ideology of Rosenberg is basicly different from the off-shoots which his ideology had to suffer and which he contradicted. I am in a positio to show that it is definitely clear from his works that Rosenberg wanted the Fuehrer principle to be limited through a special counsel which was to have an advisory function. I am also able to show that the Myth of the Twentieth Century was a special personal work of Rosenberg's and was not accepted by Hitler personally. I am also able to show and prove that Rosenberg, according to his works, was not interested in a physical destruction of the Jews and, also on the basis of his works, he was not interested in a preparation for war and, also on the basis of his works, wanted to work toward a peaceful arbitration, especially among the four great powers of Europe. And I ask the Tribunal for the opportunity to show the real and true quotations from his works as material of probative value.

THE PRESIDENT: Dr. Thoma, the Tribunal will consider the whole question of the Prosecution and the citation from these books.

SIR DAVID MAXWELL-FYFE: Number 8, My Lord, falls in a rather different field. The first eleven documents seem to be books and writings containing Jewish views of an anti-national basis. The Prosecution reminds the Tribunal that the questions at issue are: Did the defendants as co-conspirato embark in a policy of persecution of the Jews; secondly, did the defendants participate in the later manifestations of that policy, the deliberate extermination of the Jews? Within the submission of the Prosecution, it is remote and irrelevant to these important and terrible accusations that certain Jewish writings, spread over a period of years, contained matters which were not very palatable to christians.

DR. THOMA: Gentlemen ofthe Tribunal, I would like to replyto this point. I am not interested in showing that the precedence of Nazism against the Jews

H0075 - 0030

was not that it was justified. I am interested in showing the psychological reasons for anti-Semiticism in Germany. And I believe that I am justified in requesting that you kindly listen to certain newspaper quotations about the nature of the national and christian feeling. I am interested even in this case to go a little deeper and to show the High Tribunal why, as far as the history of religion is concerned, the so-called Jewish problem, and why the tragic contradiction between Jewry and the rest of the world is present, and to this point I would like to quote Jewish literature as well as theologic literature.

THE PRESIDENT: The Tribunal will consider the question.

SIR DAVID MAXWELL-FYFE: My Lord, I think the Tribunal can take the remaining documents, 9 to 14, together. They seem to deal with specific and, if I may say so without the least intention of offense, more practical matters, in that they deal with the government of the eastern territories for which this defendant was responsible, and the Prosecution has no objection to my friend using these documents in such a way as it seems fit to him.

DR. THOMA: I would like to add the following:

I have four additional documents, partially already granted by the Tribunal, but I have not been able to submit them because I have not received them personally, but I would like to have the Tribunal to take notice of a letter of Rosenberg to Hitler with the contents of the request for Rosenberg not to be considered as a candidate for the Reichstag in the year of 1924.

Point 2: A letter of Rosenberg's to Hitler regarding his dismissal as the editor of the Voelkischer Beobachter in the year 1931.

To prove this, the Myth of the Twentieth Century by Rosenberg created trmendous stir among the German people and at that time Rosenberg asked that his work be considered a purely personal work, something which in reality it was, and if his work was in any way to the detriment of the Party, he asks to be released as the editor of the Voelkischer Beobachter.

Thirdly, I would like to point to a directive by Hitler to Rosenberg in June of 1943, in which Rosenberg was directed to limit himself to matters of principle.

Fourthly, a handwritten letter of eight pages by Hitler to Rosenberg, dated in the year 1925.

H0075 - 0031

THE PRESIDENT: And the fourth one? Will you state the fourth one, the fourth document?

DR. THOMA: Not yet. I am coming to that part, Your Honor.

Point 4: The letter of Hitler to Rosenberg in the year 1925, in which Hitler showed the reasons why basicly and on principle he was not interested in participating in the Reichstag elections. Rosenberg at that time took the attitude that the Party should come into the Reichstag and in practice work with the other Parties and cooperate withthem. I have just known that this letter by Hitler is dated 1923.

Gentlemen, this is something of significance and deciding value. Rosenl wanted from the beginning that the NSDAP work together and cooperate with the other Parties and that, of course, would be the antithesis of a conspiracy. May I please present a copy of what I have just stated?

SIR DAVID MAXWELL-FYFE: My Lord, these seem to be individual documents whose relevancy can be finally dealt with when Dr. Thoma shows their purpose in his exposition. I do not stress that the Tribunal need not make any final decision on them at the present time.

DR. THOMA: I would like to refer to the point that I have already requested the general secretary to please admit these documents.

THE PRESIDENT: Dr. Thoma, have you the documents in your possession?

DR. THOMA: Yes, My Lord. The only documents that I lack are the four I mentioned. They are in the hands of the Prosecution.

THE PRESIDENT: They are in the hands of the Prosecution, are they?

DR. THOMA: Yes.

H0075-0032

SIR DAVID MAXWELL-FYFE: I have not appreciated that if Dr. Thoma wants the documents we will do our best to find them. The first time I have heard of them, of course, is when Dr. Thoma started speaking a few minutes ago. If the Prosecution has them or can find them, they will let Dr. Thoma have them or have copies of them.

THE PRESIDENT: May I ask you, Dr. Thoma, why it is that you have not put in a written application for these four?

DR. THOMA: I have already made that request, My Lord. That is, I made that request approximately a week ago. I made the first request already in November.

THE PRESIDENT: For these four documents?

DR. THOMA: The first two documents were supposed to be issued to me since November or at the latest December, 1945, but I have not as yet received them.

THE PRESIDENT: Very well, we will consider that.

Well, that finishes your documents, does it not?

DR. THOMA: Yes, My Lord.

SIR DAVIS MAXWELL-FYFE: My Lord, with regard to the witnesses, it might be convenient if I indicated the view of the Prosecution on the say, first six. The Prosecution has no objection to the first witness, Riecke, the State Secretary of the Ministry of Agriculture, or to Dr. Lammers, who is being summoned for a number of the defendants, or to Ministerialrat Beil, who is the Deputy Chief of the main Department of Labor and social policy in the east ministry. With regard to the next one, number 4, Dr. Stellbrecht, the Prosecution suggests that that is a very general matter which does not seem very relevant and they say that Dr. Stelbrecht should be cut out or at the most that that point be dealt with by a short interrogatory. We also object to 5 and 6, General Dankers and Professor Astrouski. General Dankers is sought to say that certain theatres and museums of art in Latvia remained untouched and that hundreds of thousands of Latvians begged to be able to come into the Reich.

There are letters about certain laws. The Prosecution submits that that evidence does not really touch the matters that are alleged against the defendant Rosenberg and again they make objection.

Professor Astrouski, who is alleged to be the Chief of the White Ruthenian Central Council and whose whereabouts are still unknown, who was last in Berlin

H0075 - 0033

is desired to be called to prove that the General Commissioner in Minsk exerted all efforts in order to save White Ruthenian cultural goods. There again the Prosecution says that that is a very general and indefinite allegation and, if the defendant and certain of his officials are called to give evidence as to his policy and administration, it is suggested that the witnesses 5 and 6 are really unnecessary.

I might also deal with No. 7 because the first seven witnesses are the subject of a note by Dr. Thoma. No. 7 is Dr. Haiding, who is the Chief of the Institute for German Ethnology, and it is sought to call him in order to prove that in the Baltic cultural institutions are advanced and new ones founded by Rosenberg. That witness, the Prosecution submits, falls into the same category as Dankers and Astronski. But, with regard to him, if there is any general point, they say that he could be dealt with by interrogatories but certainly should not be called.

It is relevant for the Tribunal to read the note under the No. 8 dealing with these witnesses. Dr. Thoma says:

"The witnesses present evidence for the reputation of the Soviet accusation that Rosenberg did not participate in a planning of a world ideology for the extermination of the Slavs and for the persecution of all dissenters."

The Prosecution submits that the three witnesses that they have suggested, coupled with the interrogatories if necessary, in the case of Stellbrecht and Haiding, should cover these points amply.

DR. THOMA: I agree with Sir David that as far as Dr. Haiding as well as Dr. Stellbrecht are concerned an interrogatory will be sufficient. Regarding the other witnesses, Nos. 5 and 6, I was especially interested to bring in people as witnesses who actually lived in the country, who could give their personal impressions of the cultural activities of Rosenberg, and I request that these witnesses be heard.

THE PRESIDENT: Very well, the Court will consider that.

SIR DAVID MAXWELL-FYFE: The witness Scheidt comes into the story of the defendant Rosenberg's connection with Quisling, and this has been dealt with by the interrogatories by the defense and certain interrogatories by the Prosectuion. This is obviously an important part of the case and I suggest that the Tribunal does not decide as to the personal summoning of Scheidt until the answers to the interrogatories

H0075-0034

are before the Tribunal.

No. 10 is Robert Scholtz, the Deputy Chief in the Special Staff of "Creative Art", and roughly the evidence is to show that the defendant did not take the works of art for his personal benefit. The Tribunal has ordered the slating of this witness on the 14th of January, but on the 24th of January the application of this witness was withdrawn and it now reviewed by Dr. Thoma. If the Tribunal will look at the way in which it is put in Dr. Thoma's application, which is limited and guided to certain specific acts to which Mr. Scholtz can speak, the Prosecution suggests that the Tribunal might think the most convenient way was again to get a set of interrogatories on Mr. Scholtz and see how he can deal with the many individual points put to him.

DR. THOMA: Gentlemen of the Tribunal, as far as the witness Robert Scholtz is concerned, the Norwegian question is dealt with and this witness is the decisive witness concerning the reports that Quisling made by himself without any instigation to the foreign office of the Reich. He made only these reports by himself on his own authority and I believe that the personal questioning of this man in court is especially important because he can give certain points of evidence which will be decisive as far as the question is concerned as to whether Hitler made aggressive war against Norway.

Regarding Scheidt I was granted an interrogatory in connection with the Prosecution, and I have been in conversation with them. This witness has not made an affidavit as yet and I would like to show the Tribunal that as far as the affidavit is concerned, I personally should be present and should have the permission, together with the Prosecution, to put questions to the witness myself, and I would like to repeat my request to have him present as a witness in court.

THE PRESIDENT: Dr. Thoma, if the witness was granted to you as a witness to give evidence in court, it would not be necessary for you to have any representative of the Prosecution when you saw the witness wherever he might be. The advance of a witness would entitled you to see him yourself and to obtain proof of his evidence. Is that clear?

H0075-0035

DR. THOMA: So far I have only been granted an affidavit but I have not received him as a witness as yet.

THE PRESIDENT: Yes, I only wanted to make clear to you the difference between interrogatories and being allowed to call a witness to give all the evidence. Of course, if you are submitting written interrogatories, you would see the witness, but if, on the other hand, you were going to callthe witness as a witness or to present an affidavit from him, you would then be at liberty to see the witness before he made his affidavit or before he drew up his proof.

DR. THOMA: Then, I would like to put the request that we bring Wilhelm Scheidt as a witness.

THE PRESIDENT: Very well, the Court will consider that.

DR. THOMA: So far as Robert Scholtz is concerned, I beg permission to point out that Scholtz was an Amtsleiter, who was entrusted with the practical execution for the securing of art works and objects of art, and I would like to point out to the High Tribunal that, as far as this Special Staff or Sonderstab is concerned, many experts and other German authorities were connected with this staff who in a most conscientious manner put these works of art in a safe place, restored them, andtook care of them in every way to save them for the coming generations.

H0075 - 0036

As far as Robert Scholtz is concerned, I beg your permission to point out just how this Sonderstab worked. It is important to many people. Robert Scholtz is familiar with all the particulars; just how, what methods were used, and he can say in particular that Rosenberg did not take one piece of the many works of art that were in his hands. Those pieces that went to Hitler or Goering,-- he kept a meticulous system of bookkeeping. This man also knows that all these works of art remained in the countries where they were, especially in the East, and were only brought back to the Reich when there was a danger of war; and I beg the Tribunal to call in this very important witness.

THE COURT: Dr. Thoma, can you explain why the application was withdrawn on the 24th of January?

DR. THOMA: Yes, I can do that. At that time I believe by agreement with the British or American prosecution, we decided that we would not come back to this special matter, but the French prosecution mentioned these lootings in France and this witness was then activated once more.

THE COURT: That concludes your witnesses, I think?

DR. THOMA: I have another request, My Lord. I have another request for the summoning of witnesses, and I have already made a request with the General Secretary for State Secretary, Rauedigam. Rauedigam was ministerial director in the Ministry of theEast, and he is to be called as a witness to prove that Rosenberg, as Minister of the East, did not instigate or activate any persecution of churches, but gave an edict of toleration, and through that guaranteed religious freedom for all denominations. Further, that Rosenberg himself was opposed toward the use of force and worked along those lines, and tha Rosenberg was always furthering cultural matters and was interested in strengthening the building up of such things. And it seems to be of very great importance that so far as the Ministry of the East is concerned there were many letters of thanks from the clergy in the Soviet Union. These letters came to Rosenberg to thank him for his good work. Gentlemen, if Dankers and Astrouski are not granted as witnesses then I request to use Rauedigam as a witness.

And then I have another witness; I would like to show how Rosenberg opposed his scientific opponents. I am thinking of the university professor, Dr. Guenne, who wrote a decisive book contrary to the myth of the 20th Century,

H0075-0037

and I request that we summon him as a witness. He wanted to show that the ideological opponents of Rosenberg were not afraid of the Gestapo and had nothing to fear from the Gestapo.

THE COURT: Yes. Sir David, did you want to review those last two?

SIR DAVID MAXWELL-FYFE: My Lord, in my submission these last two witnesses are not really relevant to the charges against this defendant which have been developed by the prosecution. They are general witnesses, and if I may put it -- I hope the Tribunal will not think it flippant to put it this way -- they are really witnesses who say that the defendant Rosenberg wouldn't hurt a fly; we have often seen him doing it, -- not hurting flies. It really puts it quite short as to what this class of evidence comes down to, and I respectfully submit in behalf of my colleagues that that should not be the subject of oral evidence, and it should either be disallowed, or if there is any special point raised should be dealt with by an affidavit.

THE PRESIDENT: Does the Indictment allege that he instigated the persecution of churches?

SIR DAVID MAXWELL-FYFE: The Indictment says that he took part in anti-religious teaching. I am speaking from memory. That is one of the matters. And I think there was certain correspondence between him and the defendant Bormann which was directed towards his anti-religious views. I don't remember at the moment that there was any evidence that he had personally participated in physical destruction of churches ******* That is my recollection.

My Lord, I am reminded that there is a general allegation in Appendix A that he authorized, directed, and participated in the war crimes and crimes against humanity, including a wide variety of crimes against persons and property.

THE PRESIDENT: Very well; those matters will be considered.

DR. SEIDL: (Counsel for defendant Frank): The first witness that I ask be summoned is Dr. Hans Buehler, state secretary and chief of the General Government. This witness

H0075 - 0038

is here in Nurnberg and he is the most important man for Frank. He can show he was always named in the government of Frank. He was present from the first day until the end.

THE PRESIDENT: Sir David, have you got any objection to Dr. Buehler?

SIR DAVID MAXWELL-FYFE: No I haven't, My Lord. The only point that I want to make clear is that the defendant Frank calls an enormous number of witnesses from his own officials; he calls something like fifteen. And I am not going to object to Dr. Buehler; I am going to ask the Tribunal to cut down substantially the witnesses who were officials of the general government. And it might help Dr. Seidl if I told him before the adjournment that my suggestion would be that the Tribunal would consider allowing Dr. Buehler, an affidavit from Dr. von Burgsdorff, and that they might consider allowing Fraulein Helene Draffzcyk, the defendant's secretary, and Dr. Bilfinger, and Dr. Stepp, but not the succession of officials from the Government General.

THE PRESIDENT: Sir David, you say your suggestion is to allow Dr. Buehler?

SIR DAVID MAXWELL-FYFE: Dr. Buehler.

THE PRESIDENT: And affidavits from --

SIR DAVID MAXWELL-FYFE: Affidavits from Burgsdorff, allow Dr. Lanners -- he is in the general list --

THE PRESIDENT: Yes.

SIR DAVID MAXWELL-FYFE: Allow the private secretary, Fraulein Kraffzcyk, number seven, and allow numbers nine and ten.

THE PRESIDENT: What are the names?

SIR DAVID MAXWELL-FYFE: Dr. Bilfinger and Dr. Stepp.

THE PRESIDENT: Wait a minute.

SIR DAVID MAXWELL-FYFE: And if these are allowed I should suggest that numbers thirteen to twenty, who are various officials from the office of the Government General, should not be allowed. If I may say, with the submission of the prosecution, that the height of irrelevancy will be number eighteen, Dr. Eisfeldt, who is chief of the Forestry Department.

THE PRESIDENT: Yes.

SIR DAVID MAXWELL-FYFE: I thought it might be convenient for Dr. Seidl to know what the views of the prosecution were. Of course, if he has any suggestions of any alternatives we should be pleased to consider them.

H0075 - 0039

THE PRESIDENT: We will continue with that after the adjournment, Dr. Seidl.

Before the Tribunal arises, before the adjournment, I want to say that the Tribunal willarise this afternoon at three-thirty.

(A recess was taken until 1400 hours.)

H0075-0040

Official transcript of the International Military Tribunal, in the matter of: The United States of America, the French Republic, the United Kingdom of Great Britain and Northern Ireland, and the Union of Soviet Socialist Republics, against Hermann Wilhelm Goering, et al, Defendants, sitting at Nurnburg Germany, on 4 March 1946, 1400-1530, Lord Justice Lawrence presiding.

THE PRESIDENT: Yes, Dr. Seidl.

DR. SEIDL: Mr. President, your Honors, if I have understood correctly, then Sir David has no objection to the calling of the witnesses, Dr. Hans Buehler, Dr. Bilfinger, and Miss Kraffzcyk.

THE PRESIDENT: Yes.

DR. SEIDL: The second witness, Dr. von Burgsdorff, the last Governor of Cracow, is at present in the internment camp, Moosburg. That is close to Nurnberg, 100 kilometers from here.

Dr. von Burgsdorff is the only one of nine governors whom I have named to the Court as witnesses. With regard to the importance of the position of the governors in the General Government and considering the great difficulties whic these governors had to overcome, I believe that the witness Dr. von Burgsdorff should appear here before the Court personally to be examined, and it should no be done by an interrogatory.

Is it necessary for me to speak about the evidence in detail now, the evidence that I expect from this witness?

THE PRESIDENT: We have got it in writing, and we understand that while Sir David suggests an affidavit you want to insist upon him coming personally.

DR. SEIDL: Yes, sir, especially with regard to the fact that the Court already before has approved the calling of this witness.

THE PRESIDENT: Yes.

DR. SEIDL: The next witness is Reichsminister and Chief of the Reichs Chancellery, Dr. Lammers. This witness was already approved for the Defentant Keitel, so that there are no more discussions about that necessary.

The fourth witness is State Minister Dr. Meissner. With regard to the fact that this witness is mentioned for evidence for which also Dr. Lammers was named, I should like to ask the Tribunal to permit in this case an interrogator

H0075-0041

except if this witness should be called for another defendant and would have to appear then personally.

SIR DAVID MAXWELL-FYFE: My Lord, I did check that point as far as I could from my records, and I could not find that he was being called for any other witness, for any other defendant. And as Dr. Seidl very fairly says in his first sentence, Dr. Meissner is named for the same evidence material as the witness Dr. Lammers. That is my point.

THE PRESIDENT: Yes.

DR. SEIDL: The next witness is Dr. Max Meidinger, last Chief of the Chancellory of the General Government, and he is also, like Dr. von Burgsdorff, in Moosburg. You can see from my written motion that this witness had a very important position. He had worked for all correspondents, and he knows in particular the contents of the proposals and of the objections which the Defendant Dr. Frank has directed against the central authorities in Berlin.

He is also informed about the proposals which the Defendant Dr. Frank has repeatedly made to the Fuehrer in person.

The witness was approved at an earlier date by the Tribunal, and I believe that with regard to the large knowledge of this witness -- he was for several years active in the General Government -- that a personal hearing before this Court would be advisable.

THE PRESIDENT: You say he was approved. Was he not approved as one out of a group of which Frank was to choose three? There was a large group of witnesses.

DR. SEIDL: Yes, sir. From this group he was selected, von Burgsdorff and Dr. Max Miedinger. Those are the two witnesses whom I have selected from a group of 13 witnesses.

THE PRESIDENT: Which was the other one?

DR. SEIDL: The other one was the witness number two, Dr. von Burgsdorff.

The witness number six, whom I have named and whom I would like to call personally, is the wtiness Hans Gassner. He was last press chief in the General Government, and he is also in the intermment camp of Moosburg. He is called, among other things, for the evidence that the Defendant Dr. Frank, as late as 1944, received information about the existence and the conditions in th

H0075-0042

camp at Majdanek; and through information from this witness about publications in the foreign press.

The same witness was furthermore present -- and that is not in my list -- when Dr. Frank made the statement to a press reporter that the forests of Poland would not be sufficiently large to publish the death warrants. The witness will also be able to explain in detail how this interview was kept, how the Defendant Dr. Frank made this statement, and how he wanted it to be understood and what the reasons were for him to make that statement.

I may also say that the Court likewise has approved this witness at an earlier date.

May I say furthermore that, according to the desire of the Tribunal, my list of evidence will show quite generally the direction in which I would want to list witnesses, and that I have definitely disregarded to formulate the questions in detail which I intend to put to the wtinesses.

THE PRESIDENT: Sir David, will you express your view about Number 6?

SIR DAVID MAXWELL-FYFE: If your Lordship pleases, it seemed to the Prosecution that the second matter which Herr Gassner was desired to speak as to, that the Defendant Frank only learned from him in 1944 about Majdanek, is really a matter about which no witness can be as satisfactory as the defendant himself. All the witness can say is that "I told the Defendant Frank about Majdanek, and it appeared to me that he didn't know anything about it." Well, that is not, in the view of the Prosecution, satisfactory evidence.

The Court will be able to judge from the Defendant Frank himself when he has been cross examined on that point. If it is desired that that interview should be before the Court, the Prosecution submits that it could be adequately dealt with by an affidavit or an interrogatory. Apart from that, the grounds are entirely general and again could be covered by a written statement.

THE PRESIDENT: Well, then, the next one Sir David has already expressed his views on.

DR. SEIDL: Yes, sir.

The next witness is Helen Kraffzcyk, the last secretary of the Defendant.

H0075 - 0043

If I have understood correctly, there are no objections from the side of the Prosecution.

Witness Number 8 is General von Epp, last governor of Bavaria. He is at present in the internment camp at Oberrursel. What this witness is supposed to prove

H0075 - 0044

concerns particularly the position of the Defendant, Dr. Frank, the attitude of the Defendant Frank to the question of concentration camps in the year 1933.

With regard to the fact that the witness is near Frankfurt at present, I should consider it satisfactory if the Court would permit the use of an interrogatory.

THE PRESIDENT: Yes. Sir David.

SIR DAVID MAXWELL-FYFE: Your Lordship will see that General Ritter von Epp seems to cover the same incident as Dr. Stepp. I said that I wouldn't object to Dr. Stepp, but if Dr. Seidl wishes an interrogatory on some specific points from General Ritter von Epp, I shouldn't make any objections.

DR. SEIDL: The next witness, Witness Number 9, is Dr. Rudolf Bilfinger, last Oberregierungsrat and SS Obersturmbannfuehrer in the RSHA. He is at present in Nurnberg, and the Prosecution apparently has no objection against the calling of this witness.

The next witness, Number 10 --

SIR DAVID MAXWELL-FYFE: (Interposing) My Lord, I would just like to say one word about Dr. Bilfinger. I want the Tribunal to understand what the Prosecution has in mind. The general plan of these witnesses is to show from both ends the relationship between the Defendant Frank and the central agencies. The Prosecution thought that it was right that the Defendant should be allowed to call two or three members of his own staff and a member from Headquarters, who was in the position of Dr. Bilfinger, to give the other side of the picture. I just wanted the Tribunal to understand the plan on which we were working.

THE PRESIDENT: Yes.

DR. SEIDL: Number 10 is Dr. Walter Stepp, last oberlandergerieth's president in Munich, at present in the Interment Camp at Ludwigsburg. If I have understood Sir David correctly, then he has no objection against the calling of this witness.

I would appreciate it if in this case I could submit an affidavit which I have already received, and which will prove the veracity of these points. The reading of this affidavit would only take a few minutes, and if the Court would permit me to call another witness in exchange or the Prosecution would have no objection to my calling another witness --

H0075 - 0045

SIR DAVID MAXWELL-FYFE: I have to ask for some notice as to who the other witness is. I was stating that I had no objection to Dr. Stepp because he speaks as to the Defendant Frank's position in relation with other people in Bavaria in earlier years. Of course I can't speak on behalf of my colleagues and accept just another witness blindly until I know who the witness is and what he is going to say.

DR. SEIDL: The witness Dr. Max Meidinger would be the one.

SIR DAVID MAXWELL-FYFE: I want to be as reasonable as possible. The reason that I had objected to Dr. Meidinger was because, as the Tribunal will see under Number 7, it is stated that Frauelein Kraffzcyk is called for positive facts for which the witness Dr. Meidinger has already been named. It seemed to me that the private secretary is probably the most useful witness, but I am afraid that I can't help Dr. Seidl any further. I have put my view, but I shall not say anything further against him. I am afraid that is as far as I can go on that point.

DR. SEIDL: The next witness is number 11, the witness von dem Bach-Zelewski, SS Obergruppenfuehrer and General of the Waffen SS, who has already before this Tribunal been examined as a witness of the Prosecution. I have already received approval at an earlier date for an interrogatory with that witness. In the meantime I have spoken to the witness, and the witness has made an affidavit, which I would be prepared to submit instead of calling him personally.

SIR DAVID MAXWELL-FYFE: I should have thought that it was most convenient if the witness von dem Bach-Zelewski came back and then Dr. Seidl could put any affidavit to him if he wanted. We might want to re-examine on the point. I don't know what is in the affidavit.

THE PRESIDENT: Was he cross examined by Dr. Seidl?

DR. SEIDL: When the witness was heard here I had no opportunity to cross examine the witness, and for that reason --

THE PRESIDENT: Why did you have no opportunity to cross examine him?

DR. SEIDL: Because I did not know before that he would be called by the Prosecution as witness, and becuase I had no opportunity to speak to the Defendant Frank about the questions which I could possibly have asked the witness.

H0075 - 0046

THE PRESIDENT: Well, we will consider whether the witness ought to be recalled for cross examination or whether you will be allowed to call him yourself. The affidavit which you say he has made, has that been submitted to the Prosecution?

SIR DAVID MAXWELL-FYFE: I haven't seen it, my Lord.

DR. SEIDL: No, sir. My opinion at this point is the following.

THE PRESIDENT: When you saw Von Dem Bach-Zelewski did you see him with a representative of the Prosecution?

DR. SEIDL: No, sir. It was approved, apparently by the General Secretary that I could speak to the witness, and that was at a time after the Court had already approved the use of an interrogatory.

THE PRESIDENT: But when the witness was called by the Prosecution and you had the opportunity of cross examination, if you weren't ready to cross examine you ought to have asked to cross examine him at a later date. I mean if you weren't able to cross examine at that time because you hadn't had any communication with the Defendant Frank on the subject, you ought to have asked to cross examine at a later date.

DR. SEIDL: This application to the Court I could only have made, in my opinion, if I could have countered with the possibility to put questions to this witness. I didn't know at that time that the witness could know something with regard to Frank which would be important, and that I found out later.

H0075-0047

THE PRESIDENT: Well, the Tribunal will consider the matter.

DR SEIDL: May I add something to this point? The difficulty of the cross examination for the defense counsel consists of just this, in that we do not know in advance when the prosecution intends to call a witness. We only found out when the witnesses were brought into the courtroom, and only then we knew about the subject when the prosecution started to examine the witness. It would have been much easier for us to cross examine, to conduct the cross examination if we would have known in advance about the witness and the evidence concerned; that is, so far in advance as the prosecution knows it now about the witnesses of the defense.

The next witness is witness No. 12, von Palezieux. He was the last art expert in the General Government and concerning this witness, I should like to suggest that here also the use of an interrogatory would be approved.

SIR DAVID MAXWELL FYFE: If Dr. Seidl asks for an interrogatory I have no objection. I just want to be clear that that is a written interrogatory. I don't want Dr. Seidl to be under a misapprehension.

THE PRESIDENT: You meant a written interrogatory, didn't you, Dr. Seidl?

DR. SEIDL: Yes, sir. I believe that in those cases where a written interrogatory is admitted or that an affidavit is admitted by the Court, the purpose is to avoid that witnesses be brought here and only in order to gain time.

The next witness is witness No. 13, Dr. Boepple. He was the last Secretary of State in the General Government and is now in the internment camp at Ludwigsburg, near Stuttgart. This witness seems to be one of the most important and for that reason, that he was in the Gendral Government and there he has answered a few questions concerning the Government, in which the accusation against the Defendant Frank plays an important part. I may refer in detail to my list of evidence and I want to add, first of all, that this witness may give us detailed information as to whether, during the five years of existence of the General Government, industrial equipment of that area was exploited ot taken away, or if it was rather so, that in 1943 and 1944, as a result of transfers from the Reich, the General Government had much more industry that at the beginnine.

H0075-0048

SIR DAVID MAXWELL FYFE: The prosecution submits that, as is stated in the first sentence, "***Dr. Boepple is called for a number of facts of evidence, for which Dr. Buehler has been already generally mentioned," part of the evidence stated is the relationship which the General Government agencies and the remainder as to the happenings in the General Government, can be dealt with by the witnesses already agreed to by the prosecution.

DR. SEIDL: It is correct that some of what Dr. Boepple is concerned with can also be told by Buehler but, in my opinion, it cannot be doubted that the subject of evidence, for which I have named this witness, is so important that one witness might not be sufficient to inform the Court.

I would like to point out the following point of view. The witness Buehler was chief of the government in the General Government. He was repeatedly interrogated, also by the Polish Delegation, and there is some danger that also against this witness, on account of the importance of his position which he has held there, would be a trial started against him. It is evident that under these circumstances, each defense counsel has to take into account that possibly this witness will try to defend himself in answering certain questions, and with regard to the importance of the facts, it seems that on account of the difficulty of this case, this situation, the Defendant Frank should be granted further witnesses.

THE PRESIDENT: Sir David, in your suggestion, did you include any of the other witnesses who were cumulative to Buehler?

SIR DAVID MAXWELL-FYFE: I suggested an affidavit from Boepple and only Fraulein Kraffzcyk on the generalwork of the General Government. The others, I think, are on the different points of the relationship with the central agencies.

THE PRESIDENT: Yes, I see.

DR. SEIDL: The next witness is witness No. 14, President Struve, who was chief of the Main Labor Department in theGeneral Government; that is to say, he was the labor minister in the General Government. With regard to the fact that is has been said by the prosecution of the United States against the Defendant Dr. Frank and also by the Soviet Union, especially about the deportation of workers, heavy accusations have been made against Dr. Frank. With

H0075 - 0049

regard to that, it seems to me that for this part of theevidence, at least one witness -- and that is the official -- should be heard in order to give information as to which were the directives which he received from the General Governor concerning these points.

We have found out the location where this witness is right now. He is in a camp near Paderborn.

SIR DAVID MAXWELL-FYFE: I should suggest, my Lord, with great deference, that if Dr. Seidl would run through the other witnesses and show those to which he attaches special importance, it would be convenient for the Tribunal and if Dr. Seidl would be good enough to say quite bluntly whether he attaches

H0075-0050

importance to any of the others; if he does, then it might be possible for the prosecution to reconsider the elimination of all these witnesses but the position at the moment is that there are requests for all sections, all departments of the Government General and the prosecution failed to see how these are necessary, as if Dr. Seidl would indicate any special purpose that he attaches to any of them, then one might come back and consider President Sturve again; but the position at the moment is that the prosecution do not see how it really helps the case of the Defendant Frank, that each one of the departmental chiefs should be called.

DR. SEIDL: It is not so that all officers or chiefs of these departments will be called as witnesses. There would be quite a number of others which I could have named and I have already mentioned that, for instance, of nine generally, of which every one was in charge of three and a half million people, I have mentioned only one; that is, the witness von Burgsdorff.

I have also foregone to call witnesses which I have mentioned before and that is the various military commanders. If, however, the prosecution should like to know which witnesses I consider of special importance, I will name the numbers of these witnesses. It is, besides Dr. Buehler, witness No. 2. von Burgdorff. Lammers was already approved.

The witness Dr. Max Meidinger.

The witness Gassner, No. 6.

The witness No. 7, Helene Kraffzcyk.

The witness No. 9, Bilfinger. He was not a member of the Government General.

The members of the Government. No. 13, No. 14, No. 15, and No. 19. That should not mean, however, that voluntarily I would forage all the witnesses which I have not mentioned. Witness No. 15, President Dr. Naumann, is an important witness because he was the chief of the Main Department for Nutrition and Agriculture and could give us detailed information about which the policy of the Defendant Frank was with regard to the nutrition of the Polish and Ukrainian people and how he has tried in particular, with the highest authorities of the Reich, to achieve a reduction of the demands of the Reich. Until now, the address of this witness was not known but as I have found out, his present location is supposedly known to Prosecuter Dr. Sawicki of the Polish Prosecution.

H0075 - 0051

The next witness is witness No. 16, President Ohlenbusch, who is especially called for the culture policy of the Defendant Frank in the Government General, who should give us some information on this point. There is a witness which does not count among the most important ones and I should think, there here an affidavit would be sufficient.

Witness No. 17. The same thing applies to Witness No. 17.

Witness No. 18 is Dr. Eisfeldt of the Main Department Forestry, and who could make statements about the forestry policy of the defendant, and that seems to me to be a point -- information about the fact that the trouble with the resistance became so strong that it was not in the interest of the Polish and Ukrainian people and that strong measures had to be taken.

Witness No. 19 is President Lesacker, last president of the Main Department Internal Administration, and also in this case, we have found out only recently where he is.

Witness No. 20 is Professor Dr. Teitge, who, as can be seem from my list could give information about the attempts of the Defendant Dr. Frank concerning the health policies.

SIR DAVID MAXWELL-FYFE: May it please the Tribunal, I now had the advantage of hearing everything that Dr. Seidl had to say and it seems to me that so far as the witnesses from the Government General itself are concerned, the position is that Dr. Boepple, No. 13, doesn't add greatly to the general position which would be explained by Dr. Buehler and Dr. Burgsdorff and Fraulein Kraffzcyk; that the witness No. 5, Dr. Meidinger, seems to deal with very much the same problems as President Struve, witness No. 14, and the witness Naumann, No. 15, and that on reconsideration, I think the prosecution would be prepared to agree that one of these witnesses, either Dr. Meidinger, or Dr. Struve, or Dr. Naumann, might well be called.

With regard to all the others, Dr. Ohlenbusch, and Dr. Senkawskz, and Dr. Eisfeldt, seem to speak about points that are really removed from the issues in this case, and Dr. Lesacker speaks on the general attitude of the defendant towards Poles and Ukrainians, which is covered by Dr. Buehler and von Burgsdorff, and Meidinger, if he is granted; and the last witness, Teitge, seems again to speak as to a really departmental point which is not a serious issue in the case and, therefore, in trying to apply our own principle of recommending any witness where there is a real relevancy, the prosecution would be prepared

H0075 - 0052

to go as far as I said in their recommendation, that in addition to the witnesses that I have mentioned, they would suggest that either Dr. Meidinger or one of the witnesses, Struve or Naumann, should be called.

H0075 - 0053

COLONEL POKROWSKY: May I have permission to make a few additional statements, to add something to which my respected colleague, Sir David, has said?

THE PRESIDENT: Yes.

COLONEL POKROWSKY: After I had heard Dr. Seidl, I came to the conclusion that we shall ask you to consider our negative attitude to the question about the repeated calling of the witness von dem Bach-Zelewski. The Soviet Delegation is afraid that if the Tribunal finds it possible to grant the application which, according to me, is absolutely unfounded and without any basis, then a very dangerous precedent would be created for actually denying or rejecting the decision in principle which has already been accepted and already made by the Tribunal in regard to this respect. As I said, the Tribunal is of the opinion that every witness can be and should be called only once and with certain exceptions.

In response to your questions, Dr. Seidl confirms that when cross examination was taking place here in this hall by my colleague, Colonel Taylor and me, Dr. Seidl was present here. He saw and he heard how cross examination was being done. His reference to the fact that he didn't have time enough to prepare himself to participate in this cross examination, seems to me that this reference is not worth paying any attention to. He was in the same position as the rest of us were. The Tribunal will remember that a whole series of defense counsel participated in cross examination, seems to me that this reference is not worth paying any attention to. He was in the same position as the rest of us were. The Tribunal will remember that a whole series of defense counsel participated in cross examination of the witness von dem Bach-Zelewski and I see no basis or foundation why, for the sake of Dr. Seidl, there should be created some different attitude and I don't see any reason or foundation, and it is purely incomprehensivle to me, on the part of Dr. Seidl, that there should be any change made in regard to the decision and principles of the Tribunal, which deals with the fact that the witness is called only once. That is what I wanted to add to the words of my respected colleague, Sir David Maxwell-Fyfe.

H0075 - 0054

DR. SEIDL: Mr. President, I do not believe that the application to call an important witness, that the demand to hear him again is so incomprehensible if the cross examination is difficult, for reasons which we cannot influence. In the first place, I have not made that application to call the witness here but I have only asked the Court for permission to obtain an affidavit from that witness and to submit this to the Tribunal. If, now, the affidavit is such --

THE PRESIDENT: Are you dealing with No. 20?

DR. SEIDL: No, sir. I speak about the witness von dem Bach-Zelewski.

THE PRESIDENT: The Tribunal will consider what you said about it.

DR. SEIDL: May I now begin with the list of documents, Mr. President?

THE PRESIDENT: Yes.

SIR DAVID MAXWELL-FYFE: May it please the Tribunal, with regard to the documents, Dr. Seidl asks for the correspondence between the Governor General and the Reichschancellory. I have just verified that we have not got the other part of the correspondence. Of course, if any come into our possession, we will be only too pleased to give them to Dr. Seidl. We haven't got them and we haven't also got the personal files of the Defendant Frank, in the Reich Security Office. The same applies to that, that if we do get possession we will let Dr. Seidl know at once.

THE PRESIDENT: Have the prosecution any objection to the other documents which are asked for?

SIR DAVID MAXWELL-FYFE: I think that is all. The others are the diary. Dr. Seidl can comment on and call evidence as he desires as to the diary.

THE PRESIDENT: Yes, very well.

H0075-0055

THE PRESIDENT: Now counsel for the defendant Frick.

DR. OTTO PANNENBECKER: I am Dr. Pannenbecker, counsel for the defendant Frick. The first witness I have to call in is Dr. Lammers. He is also called for the defendant Keitel, so I do not have to say anything further about him.

As to the second witness, I have named the former State Secretary in the Department of the Interior, Dr. Stuckert, one of the State Secretaries in the Department of the Interior, and he is in custody in Nurnberg. He was also chief of the Zentralstelle.

THE PRESIDENT: Is Dr. Stuckart being asked for by the defendant Keitel?

SIR DAVID MAXWELL-FYFE: I think the explanation is that it was certainly thought that on the 9th February this witness was to be so called by the defendant Keitel, and on that basis he was approved in connection with the defendant Frick. That is not directly my request to write it on the defendant Keitel's final list.

THE PRESIDENT: You have no objection to him?

SIR DAVID MAXWELL-FYFE: I have no objection to him, Your Lordship.

THE PRESIDENT: Very well.

DR. PANNENBECKER: Mr. President, No.3, I have mentioned Daluege, who was formerly a General of the Police Force, and who is now in custody in Nurnberg. He is informed especially about the position and the attitude of defendant Frick in regard to the anti-Jewish demonstration 9th November 1938, and he also has information about the relations between Frick and Himmler.

Witness No.4, I have mentioned Dr. Diehls, who is now in the internment camp at Hanover. The witness became in 1933 -- in 1934 Chief of the Gestapo of Prussia. He is informed about the measures which the defendant Frick, as Minister of the Interior, has taken about the various countries; decreed restrictive rules about the concentration camps, and also he is informed about the special measures concerning the conditions of these camps.

SIR DAVID MAXWELL-FYFE: I submit that this witness' evidence should be taken in writing. With regard to the early part, the Tribunal will

H0075 - 0056

have the advantages of the defendant Goering who was concerned with especially that of the practices of the police in Prussia in 1933 and 1934, and with regard to the other points, as to the measures of the defendant Frick, and of course, these are either by laws or orders, or administrative measures, which could be included in the submission by the prosecution as being dealt with by written testimony, supplemented by testimony of the defendant Frick himself.

DR. PANNENBECKER: If I may say something. I believe that it would be more practical to hear the witness here before the Court, because then by previous conference with the witness it could be satisfied about the point he is informed, whereas in interrogatories that could not be well discussed in detail.

THE PRESIDENT: We will consider that.

DR. PANNENBECKER: Then I may go to No.5, the former Police Commissioner, Gillhuber. Gillhuber had accompanied Frick in all of his travels as his bodyguard, and he also knows which travels Frick had made, and therefore is in a position to say that Frick never made a trip to the Concentration Camp Dachau, which is contrary to the statement made here by the witness Blaha.

SIR DAVID MAXWELL-FYFE: I have no objection, of course, to the defendant Frick dealing with that point. The only difficulty as to a witness of this sort is, I will say, unfamiliarity with all of his travels, because if he is or was a bodyguard, he is almost certain to have periods of leave, and periods of interruption which would occur. I should have thought that this could have been dealt with by affidavits, or an interrogation, if necessary. When they are seen the matter could be reconsidered. But I would suggest at first stage the interrogations, indicating in the witness' own account how often he was with the defendant Frick, and what interruptions would be the most frequent in that period; therefore, it is for the Court.

DR. PANNENBECKER: I agree with that, Mr. President.

SIR DAVID MAXWELL-FYFE: Now dealing with the next point, I have a

H0075-0057

suggestion to make in regard to the witness -- the next witness Denson. The point, as I understand it there, is that the witness Blaha said before the Tribunal that Frick had visited Dachau; that it was, in his evidence on the Dachau trial, he never made a trip to Dachau. I should say the most satisfactory way in dealing with that is to get the shorthand notes of the witness Blaha's evidence at the Blaha Trial, and put in a certified copy.

DR. PANNENBECKER: Agreed. I believe also that this notation --

SIR DAVID MAXWELL-FYFE: Actually we have a certified copy of the shorthand notes of Blaha's evidence here, and I also say in fairness to the witness that it does show he did say that at Dachau Frick visited the concentration camp, and I'll show it to Dr. Pannenbecker whenever he likes.

DR. PANNENBECKER: No. 7, I have mentioned Dr. Messersmith, but an affidavit has been read here by the prosecution already, and his interrogation was approved, and we have not as yet received an answer. I would ask anyway to see whether a further affidavit would be necessary.

Then in furtherance I have also mentioned the name of the witness Dr. Gisevius.

SIR DAVID MAXWELL-FYFE: I should submit that Dr. Gisevius' evidence might also be reasonably dealt with directly in an affidavit in answer to interrogatories.

THE PRESIDENT: Who is this in the exhibit?

SIR DAVID MAXWELL-FYFE: Dr. Visevius, in the supplement.

THE PRESIDENT: I beg your pardon.

SIR DAVID MAXWELL-FYFE: He was consultant of the Reichsminister of the Interior, and that the defendant Frick did first refer to Switzerland after 20 July 1944; that he has the exact knowledge of the responsibility and actual authority of the defendant Frick to issue orders in police matters. I should think that such matters might be answered, or conveniently dealt with in an affidavit.

MR. PRESIDENT: What do you say, Dr. Pannenbecker?

DR. PANNENBECKER: I would like to say that Dr. Visevius is also called, or is needed by the defendant Schacht as his witness, as much as I

H0075-0058

know, about the incident of 20th of July. I believe that this witness should be here for the defendant Schacht also. It would be better also if the witness could appear personally for the defendant Frick. Of course, if this cannot be done, an affidavit would have to be sufficient.

THE PRESIDENT: You asked earlier for the return of Ratke. I think that you were told you could have Stuckart for him. Will you now leave out of your application to have him because you have Stuckart.

H0075 - 0059

DR. PANNENBECKER: Now it was like this with regard to the incident of Blaha. I had named three witnesses, Ratke, Dr. Stuckart, and we dropped Ratka when I got Gillhuber.

May I speak about the document here.

THE PRESIDENT: Yes.

DR. PANNENBECKER: Now characterizing the personality of the defendant Frick, the defendant Frick, I think, requested to be permitted to fetch two books; one small one of the Reich in which a speech by Frick is contained therein. I only intend to quote short excerpts from these books in my brief. Concerning the other book "Inside Europe" by John Gunther, I also only want to quote a short excerpt.

Then as further evidence I have to offer later for competency the question that Frick was opposed against the arbitrary measure in connection with the protective custody in connection with the internment in concentration camps, and that he has issued decrees against them. I refer to a document which the prosecution has originally submitted but not read in court. These documents I have listed under No. 2A and 82C in detail.

Furthermore, I have asked to get this file of the police department of the Ministry of the Interior, where were also decrees, and the incident of the defendant Frick can be found.

About his actions in individual cases, I would like to present a letter which I have received by the former Deputy Dr. Wulle. I have mentioned it under No. 3.

The prosecution has submitted an affidavit by Dr. Seger, in which he declared that Frick as in December 1932 as Chairman of the Foreign Committee of the Reichstag, in the first committee that he had made statements about the political opponents, putting the political opponents into concentration camps.

In No. 4 I have asked for the records of the prosecution of the Foreign Office, the notes of which show that such a statement has not been made, and has not been recorded.

Then the protocol, or minutes of the trial in Dachau concerning the case

H0075 - 0060

at Dachau, it has already been covered.

No. 6 concerns the affidavit of the witness Dr. Stuckart, which he signed for the American prosecution on November 21, 1945, and, I also could ask this witness about these questions when he would be called, and an examination would be shortened when I could read this affidavit, which was made for the American prosecution.

Then the question to show the position of Frick as Reich protector of Bohemia and Moravia, I would like to submit document No. 1368 on "To the Bitter end." I found out about this book from an excerpt which appeared on 26 February 1946 in the "Sueddeutche Zeitung" and have been interested in the details of, that was about 30 June 1934. This excerpt shows that there is a remark shown that for the incidents of 30 Jund 1934, the responsibility was taken from Frick, and sent to Goering and Himmler. The book will bring also other details out concerning these points, because Gisevius at the time was an expert on matters of police for the Reichsminister of the Interior. I would like to therefore present the book at this time.

SIR DAVID MAXWELL-FYFE: I might say, I don't think that there is much between Dr. Pannenbecker and the prosecution. I might run through the documents asked for. In the book "We Build Up", if Dr. Pannenbecker will indicate the excerpts he is going to use, the prosecution will have no objection to his quoting from them, and the same with regard to the quotations from Mr. Gunther's book "Inside Europe". In paragraph 2 of the document 770 PS, the excerpt from a newspaper, the document 775-PS, to these there are no objections. The files of the police division are not in the hands of the prosecution. If we do get any of them, then we shall let Dr. Pannenbecker know. So far as the letter from the former Deputy Wulle is concerned, there is no objection to that. I have not seen any letter as yet, but there is no objection to it in principle. With regard to No. 4, I think there is some misunderstanding there. That is, document L-83. The affidavit of Seger is before the Tribunal as US Exhibit No. 234, and the statement with regard to the defendant Seger was that the defendant Frick said to him: "Don't worry, when we are in power, we shall put all of you guys into concentration camps." This was alleged in the affidavit

H0075 - 0061

as said by Frick to Seger during the course of a conversation. It is not alleged to have been said in a conference of Foreign Com ittee. Then No. 5, I say I have got the shorthand notes, and it will be shown to Dr. Pannenbecker. As to No. 6, I understand that Dr. Stuckart is going to be called. Of course, the affidavit can be put as to him, and we can verify its truth. The document 1336-PS will be put at the disposal of the defense and they can make such use of it as they desire. I think that covers the documents. So far as this Dr. Gisevius book, I understand that Dr. Pannenbecker has not a copy of that. Perhaps the Tribunal will see that a copy can be obtained for him. I do not know whether we have a copy. The prosecutor will see what we can do and to see that a copy is available.

DR. PANNENBECKER: May I say as to No. 4, Dr. Seger. As to that document may I make a short remark. Maybe it could be clarified by an interrogatory whether Frick has made this statement in his capacity as Chairman of Foreign Affairs Committee, or not. That is, to say, whether that statement is in the stenographic minutes or not.

SIR DAVID MAXWELL-FYFE: I understand that it was not in the minutes. I would not be in the minutes because Dr. Seger alleges that it was made during the course of a conversation, and not in that committee.

DR. PANNENBECKER: Thank you.

THE PRESIDENT: The Tribunal will continue tomorrow morning at 10 o'clock, if possible, with the further applications for witnesses and documents, which the Tribunal understands have been lodged on Friday evening.

(The Tribunal adjourned until 5 March 1946 at 1000 hours.)